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7 UNITED STATES DISTRICT COURT  
8 PORTLAND DIVISION  
9

10 STEPHEN BROWN, as Personal  
11 Representative of the Estate of  
12 MICHAEL BARTON, deceased,  
13  
14 Plaintiff,

15 vs.

16 STATE OF OREGON aka OREGON  
17 DEPARTMENT OF CORRECTIONS;  
18 CHRISTOPHER DiGUILIO, M.D.; DAVE  
19 BROWN, R.N.; COLETTE PETERS;  
20 BRANDON KELLY; CARRIE COFFEY,  
21 R.N.; APRIL STEDRONSKY-SOWARD,  
22 R.N.; MARIAH MCCULLOUGH, R.N.;  
23 MARY COREY, R.N.; PAULA YOUNG  
24 R.N.; REBECCA GARZA, L.P.N.;  
25 MARGEUX BOWDEN; RALPH  
26 THOMASON; MIKE ANDERSON;  
ARTHUR CRAM; and DOES 1 - 20,

Defendants.

Case No. 3:20-cv-00270-SB

FIRST AMENDED COMPLAINT

Negligence, Negligence Per Se,  
Violations of Civil Rights (42 USCA  
1983), Wrongful Death, Disability  
Discrimination, Spoliation

Plaintiff demands trial by jury  
(Not Subject to Mandatory Arbitration)

Amount Claimed: \$ 20,000,000

Plaintiff, through counsel, alleges as follows:

**FACTS COMMON TO ALL CLAIMS**

**1.**

Michael Barton died because of the neglect or other misconduct of at least one  
of these defendants.

2.

Stephen Brown is Michael Barton's brother and has been appointed as personal representative of Michael Brown's estate with full powers.

3.

The Oregon State Penitentiary (or "the prison") is located at 2605 State Street in Salem, Oregon.

4.

The State of Oregon and Oregon Department Of Corrections (or "DOC") are responsible for the healthcare system at the Oregon State Penitentiary.

5.

Defendants Diguilio, Brown, Peters, Kelly, and Coffey and DOES 1-20 are executives, managers, or administrators who determine policy custom, and practice at the prison, including policies that relate to the monitoring and care of inmates; the location of the infirmary; retention of information about reasonably likely legal claims; staffing levels; flu shot administration; training for prison personnel who work with mentally ill inmates; and training for prison personnel for administering CPR to inmates .

6.

Defendants Coffey, Stedronsky-Soward, Bailey, McCullough, Corey, Garza, Bowden, Thomason, Anderson, Cram, Young and DOES 1-20 were responsible for monitoring and providing medical care to Michael Barton.

7.

DOES 1-20 are entities or individuals that are presently unknown to plaintiff, but that were involved in the medical care or monitoring of Michael Barton, in deciding when he should receive care and/or what kind care he should receive, and/or in establishing policies or in hiring or training practices that led to his death.

1 8.

2 These defendants acted under color of state law and deprived Michael Barton of  
3 rights secured by the Constitution or by federal statute.

4 9.

5 Since April 27, 2017, decedent Michael Barton had been an inmate at the  
6 Oregon State Penitentiary with a scheduled release date of November 1, 2020. During  
7 his incarceration, Michael Barton was transferred to Intermediate Care Housing (or  
8 “ICH”) at the Oregon State Penitentiary due to his having been diagnosed with anxiety,  
9 bi-polar disorder, depression, brain injury, confusion, hallucinations, and other mental  
10 health conditions. His mental health conditions caused him to experience difficulty  
11 with daily tasks as simple as turning off the water faucet in his cell or opening his  
12 unlocked cell door.

13 10.

14 In January 2018, Michael Barton developed symptoms of an influenza like  
15 condition for which he sought medical treatment at the Oregon State Penitentiary.  
16 Michael Barton relied on the agents of the State of Oregon, including its guards,  
17 doctors, and nurses for his access to care. He had no freedom to contact providers  
18 outside the prison, and little capacity to provide for his own care. Upon information  
19 and belief, Michael Barton did not receive influenza virus inoculations during 2017 or  
20 2018.

21 11.

22 During January and early February 2018, Michael Barton’s symptoms became  
23 worse. His influenza became diffuse pneumonia, and he developed fatigue, weakness,  
24 chills, sweats, dizziness, he coughed up sputum, his skin turned grey, and he developed  
25 diffuse swelling and discoloration of his entire right arm, shoulder, hand, and other  
26 appendages.

1 **12.**

2 As Michael Barton's influenza progressed to diffuse pneumonia, medical  
3 personnel at the prison found that his left lung had "significantly diminished lung  
4 sounds throughout." He was also noted to have ineffective airway exchange, low  
5 blood oxygen levels, and blood pressure 30 - 40 points below baseline. More than a  
6 gallon of purulent fluid (a.k.a. pus) was accumulating in his left lung. His desperate  
7 requests to be admitted into the infirmary were denied.

8 **13.**

9 Michael Barton became too weak to walk, to stand, or to get out of his bed  
10 without assistance. He collapsed while prison personnel, including medical  
11 professionals, were present. He repeatedly wept and begged prison personnel to be  
12 admitted to and treated in the infirmary, but his entreaties were denied and so were the  
13 entreaties of others who observed his condition. Michael Barton believed, and told  
14 prison personnel, that the water in his prison cell caused him to become dizzy and to  
15 suffer other problems. One stated basis for refusing to admit him to the prison  
16 infirmary was that he was so ill that he would make other people sick as well. A post-  
17 mortem internal investigation by the DOC found that admitting Michael Barton would  
18 have allowed monitoring of and intervention for his life-threatening conditions, but  
19 that the infirmary at the prison was "extremely ill-constructed for admitting influenza  
20 patients...".

21 **14.**

22 His weakened condition prevented him from drinking water or other fluids,  
23 from eating, and from taking medicine for his mental and physical conditions. Trays of  
24 uneaten food accumulated in his cell. Despite knowing of his weakened condition and  
25 diagnosed pneumonia, prison personnel failed to enter his cell to take vital signs during  
26 days when his health was collapsing and his life was in danger. During this time,

1 prison personnel directed an inmate assistant to desist from trying to help Mr. Barton  
2 drink water that he needed to take medications.

3 **15.**

4 By this time, Michael Barton had developed influenza, pneumonia, and sepsis  
5 (or bacterial infection of the blood). Rather than providing emergency treatment for  
6 these conditions, prison personnel who knew about Mr. Barton's cognitive limitations  
7 interpreted his despair and lifelessness as defiance, and denied him care.

8 **16.**

9 On February 5, 2018, Michael Barton was transported by emergency medical  
10 services to the Salem Health Emergency Department (or "emergency department").  
11 Paramedics who treated and transported Michael Barton told hospital personnel that  
12 Michael Barton had experienced flu-like symptoms, fatigue, and weakness for the  
13 prior three weeks. He had become unconscious and incontinent, which was witnessed  
14 by prison staff. According to the paramedics, Mr. Barton "had not received CPR or  
15 medication when they arrived." Rescue personnel commented that prison personnel  
16 were "very poor historians and struggled conveying any type of accurate time line of  
17 events pertaining to current situation."

18 **17.**

19 When he arrived at the emergency department at or about 9:13 a.m., Michael  
20 Barton was barely alive. He had "bilateral breath sounds, diminished on the left", and  
21 was diagnosed with conditions including cardiac arrest, septic shock, acute kidney  
22 failure, poor neurological function, mottled color of his left leg down to his toes, and  
23 deep vein thrombosis. An x-ray showed a "complete white out" of his left lung and the  
24 surrounding area, which indicated a "large volume pleural effusion with left to right  
25 shift of the midline structures." A chest tube was placed and the surgical incision  
26 resulted in the drainage of "copious purulent fluid," ultimately more than a gallon.

**18.**

On February 6, 2018, Michael Barton was extubated and pronounced dead at 7:31 p.m. He was 54 years old. His cause of death was determined to be influenza B, leading to pneumonia, leading to staff infection, leading to sepsis, leading to severe septic shock, leading to cardiac arrest, leading to anorexic brain and multisystem injury, leading to multisystem failure with severe anorexic brain injury.

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**19.**

A “Death Report” by the DOC was completed by February 9, 2018 and a “Mortality Case Review” was completed on February 7, 2018. The report concluded that (a) Michael Barton repeatedly had abnormal vital signs after the diagnoses of pneumonia; (b) “more and earlier intervention on multiple visits with multiple staff” may have saved Michael Barton’s life; (c) orthostatic vital signs were never taken; (d) Michael Barton’s inability to get up from his bed was misinterpreted as a refusal to get up; (e) Michael Barton’s mental illness may have confused or distracted his care providers; (f) prison personnel did not enter the cell for three days to evaluate Michael Barton or to take his vital signs; (g) the infirmary was extremely ill-constructed for admitting influenza patients ; (h) “system failure” led prison personnel to experience mental fatigue and numbing and thoroughly compromised the care of inmates.

**20.**

Based on information and belief, no autopsy was performed on Michael Barton, and no effort was made to inform the personal representative of the cause of death.

**21.**

In the days following Michael Barton’s death, Stephen Brown was informed that his brother’s cause of death was a heart attack. In about July 2019, Stephen Brown was contacted by Disability Rights of Oregon from whom he learned the true cause of

1 death and the misconduct that led to his brother's death. Attached hereto as Exhibit A  
2 is a copy of the independent investigation report.

3 **22.**

4 On August 7, 2019, counsel for Stephen Brown sent notice of the claim to the  
5 Oregon Department of Administrative Services and received a responsive letter on  
6 August 12, 2019. Attached hereto as Exhibit B and C are copies of those letters.

7  
8 **23.**

9 The notice of claim was timely and complied with ORS 30. 275 (2)(a). See  
10 *Stephens v. Bohlman*, 314 OR 344, 838 P2d 600 (1992).

11 **FIRST CLAIM FOR RELIEF**

12 **(Negligence – wrongful death)**

13 **24.**

14 Plaintiff re-alleges paragraphs 1 through 23 as though fully set forth here.

15 **25.**

16 Defendants, while acting within the course and scope of their duties within the  
17 Oregon Department of Corrections, were negligent in one or more of the following  
18 particulars:

- 19 a. Failing to use reasonable care to provide Michael Barton healthcare while he  
20 was under their supervision as an inmate;  
21 b. Failing to provide prompt medical attention to Michael Barton's serious  
22 medical needs;  
23 c. Failing to monitor whether that prescribed medications were being  
24 successfully administered or, in the alternative, failing to administer  
25 prescribed medications by alternative methods such as by IV;  
26 d. Failing to take reasonable preventative measures to address Michael

- 1 Barton's illnesses and death;
- 2 e. Failing to provide appropriate staff responses to Michael Barton's
- 3 conditions;
- 4 f. Failing to provide appropriate housing and care for Michael Barton;
- 5 g. Failing to timely diagnose Michael Barton's illnesses;
- 6 h. Failing to accurately diagnose Michael Barton's illnesses;
- 7 i. Failing to take orthostatic vital signs;
- 8 j. Failing to react reasonably to Michael Barton's abnormal vital signs;
- 9 k. Providing a prison infirmary extremely ill-constructed for monitoring and
- 10 treating inmates with influenza, pneumonia, and sepsis;
- 11 l. Given the inadequacy of the infirmary, in failing either to heighten in-cell
- 12 monitoring and care for Mr. Barton or to refer him for treatment at another
- 13 facility;
- 14 m. Failing to admit Michael Barton into the prison infirmary or to otherwise
- 15 elevate the amount of care he received, when his condition reasonably
- 16 required doing so;
- 17 n. Failing to commence CPR while Michael Barton was in cardiac arrest;
- 18 o. Failing to sustain CPR while Michael Barton was in cardiac arrest;
- 19 p. Failing to administer AED shocks while Michael Barton was in cardiac
- 20 arrest;
- 21 q. Failing to accurately convey Michael Barton's medical condition and the
- 22 treatment he had received before EMS arrived to paramedics;
- 23 r. Failing to provide reasonable staffing levels to prevent staff fatigue and
- 24 numbing;
- 25 s. Failing to create, enact, and enforce policies to use reasonable care in
- 26 providing healthcare to Michael Barton while he was under their supervision



1 as an inmate;

2 t. Failing to hire and train employees to use reasonable care in providing  
3 healthcare to Michael Barton while he was under their supervision as an  
4 inmate;

5 u. Failing to provide reasonable training and/or supervision for dealing with  
6 inmates with significant mental conditions; and

7 v. Failing to provide Michael Barton with influenza virus inoculation.

8 **26.**

9 As result of defendant's negligence, Michael Barton suffered serious prolonged  
10 injury and death. Michael Barton's serious injury and death were a reasonably  
11 foreseeable result of defendant's negligence. As compensation for Michael Barton's  
12 suffering and death, plaintiff should recover an amount for non-economic damages to  
13 be decided by the jury not to exceed \$10,000,000, and economic damages not to  
14 exceed \$300,000.

15 **27.**

16 Further, defendants acted with reckless and outrageous indifference to a highly  
17 unreasonable risk of harm and acted with conscious indifference to the health, safety  
18 and welfare of others. Plaintiff should recover an amount for punitive damages to be  
19 decided by a jury not to exceed \$10,000,000.

20 **SECOND CLAIM FOR RELIEF**

21 **(Negligence Per Se)**

22 **28.**

23 Plaintiff re-alleges paragraphs 1 through 23 as though fully set forth here.

24 **29.**

25 The prison was and is governed by federal and state statutes and administrative  
26 rules. Oregon administrative rules require prisons to develop policies for the

organization and coordination of healthcare for their inmates.

**30.**

The Department of Corrections violated the following administrative rules:

- a. Oregon Administrative Rule 291-24-016 (1)(a);
- b. Oregon Administrative Rule 291-24-016 (1)(b);
- c. Oregon Administrative Rule 839-006-0291;
- d. Oregon Administrative Rule 839-006-0270;

Michael Barton was within the class of persons intended to be protected by the above-cited provisions. In suffering prolonged influenza, pneumonia, sepsis, renal failure, and death, Michael Barton suffered the kind of harm that the above-cited provisions were intended to prevent.

**31.**

As result of defendants' violation of these rules, Michael Barton suffered serious injury and death. Michael Barton's serious injury and death were a reasonably foreseeable result of defendant's negligence. As compensation for Michael Barton's suffering and death, plaintiff should recover an amount for non-economic damages to be decided by the jury not to exceed \$10,000,000, and economic damages not to exceed \$300,000.

**32.**

Further, defendants acted with reckless and outrageous indifference to a highly unreasonable risk of harm and acted with conscious indifference to the health, safety and welfare of others. Plaintiff should recover an amount for punitive damages to be decided by a jury not to exceed \$10,000,000.

**THIRD CLAIM FOR RELIEF**

**(Civil Rights- 8<sup>th</sup> Amendment, 14<sup>th</sup> Amendment and 42 USC 1983-Wrongful Death)**

**33.**

1 Plaintiff re-alleges paragraphs 1 through 22 as though fully set forth here.

2 **34.**

3 Defendants were deliberately indifferent to Michael Barton's rights under the  
 4 8<sup>th</sup> and 14<sup>th</sup> amendments of the U.S. Constitution. Defendants knew that Mr. Barton  
 5 relied on them for his access to vitally needed medical treatment. Defendants further  
 6 knew that Mr. Barton had been diagnosed as delusional, as having hallucinations and  
 7 other cognitive and mental health conditions. Finally, defendants knew that Mr. Barton  
 8 had been diagnosed with influenza and pneumonia, and that he had the abnormal vital  
 9 signs and symptoms for septic shock and kidney failure. Despite this, defendants  
 10 refused to provide adequate medical care to address these conditions and to prevent his  
 11 death.

12 **35.**

13 Specifically, despite having such knowledge, defendants were deliberately  
 14 indifferent to Michael Barton's serious illness in the following particulars:

- 15 a. Failing to use reasonable care to provide Michael Barton healthcare while he  
 16 was under their supervision as an inmate;
- 17 b. Failing to provide prompt medical attention to Michael Barton's serious  
 18 medical needs;
- 19 c. Failing to determine that prescribed medications were being successfully  
 20 administered or, in the alternative, failing to administer prescribed  
 21 medications by alternative methods such as by IV;
- 22 d. Failing to take reasonable preventative measures to address Michael  
 23 Barton's illnesses and death;
- 24 e. Failing to provide appropriate staff responses to Michael Barton's  
 25 conditions;
- 26 f. Failing to provide appropriate housing and care for Michael Barton;

- 1 g. Failing to timely diagnose Michael Barton's illnesses;
- 2 h. Failing to accurately diagnose Michael Barton's illnesses;
- 3 i. Failing to take orthostatic vital signs;
- 4 j. Failing to react reasonably to Michael Barton's abnormal vital signs;
- 5 k. Providing a prison infirmary extremely ill-constructed for monitoring and
- 6 treating inmates with influenza, pneumonia, and sepsis;
- 7 l. Given the inadequacy of the infirmary, in failing either to heighten in-cell
- 8 monitoring and care for Mr. Barton or to refer him for treatment at another
- 9 facility;
- 10 m. Failing to admit Michael Barton into the prison infirmary or to otherwise
- 11 elevate the amount of care he received, when his condition reasonably
- 12 required doing so;
- 13 n. Failing to commence CPR while Michael Barton was in cardiac arrest;
- 14 o. Failing to sustain CPR while Michael Barton was in cardiac arrest;
- 15 p. Failing to administer AED shocks while Michael Barton was in cardiac
- 16 arrest;
- 17 q. in failing to accurately convey Michael Barton's medical condition and the
- 18 treatment he had received before EMS arrived to paramedics;
- 19 r. Failing to provide reasonable staffing levels to prevent staff fatigue and
- 20 numbing;
- 21 s. Failing to create, enact, and enforce policies to use reasonable care in
- 22 providing healthcare to Michael Barton while he was under their supervision
- 23 as an inmate;
- 24 t. Failing to hire and train employees to use reasonable care in providing
- 25 healthcare to Michael Barton while he was under their supervision as an
- 26 inmate;

- 1 u. Failing to provide reasonable training and/or supervision for dealing with
- 2 inmates with significant mental conditions; and
- 3 v. Failing to provide Michael Barton with influenza virus inoculation.

4 **36.**

5 Defendants' acts and omissions, as set forth above, were the real and proximate  
 6 cause of Michael Barton suffering a prolonged and intense illness, and of his death.  
 7 His influenza and pneumonia were treatable with consistent use of medications and  
 8 with other care. Without such care, his deteriorating condition and death were  
 9 reasonably foreseeable to defendants. Michael Barton's estate is entitled to  
 10 \$10,300,000 to compensate for his suffering and death.

11 **37.**

12 Defendants also acted with reckless and outrageous indifference to a highly  
 13 unreasonable risk and acted with conscious indifference to Mr. Barton's health, safety  
 14 and welfare. As a result, Michael Barton's estate is entitled to punitive damages of  
 15 \$10,000,000.

16 **38.**

17 Plaintiff is also entitled to recover his costs and reasonable attorney fees.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Civil Rights- 8<sup>th</sup> Amendment, 14<sup>th</sup> Amendment and 42 USC 1983-Wrongful**  
 20 **Death -Supervisor Claims)**

21 **39.**

22 Plaintiff re-alleges paragraphs 1 through 23 as though fully set forth here.

23 **40.**

24 Defendants State of Oregon, Oregon Department of Corrections, DiGuilo, Brown,  
 25 Peters, Kelly, Coffey, Bowden and Does 1-20 (or "supervisor defendants") made  
 26 policy for, managed, and/or supervised personnel who were involved in the monitoring

1 and treatment of Michael Barton. Michael Barton was deprived of his legal rights as  
 2 alleged herein due to the policies, customs, or practices established or sustained by  
 3 these defendants.

4 **41.**

5 The supervisor defendants were aware of such conditions as the inadequate prison  
 6 infirmary, and were responsible for hiring and training employees to use reasonable  
 7 care in providing healthcare to Michael Barton. The supervisor defendants knew or  
 8 should have known that failure to hire and train employees to use reasonable care in  
 9 providing healthcare to Michael Barton would cause his serious injury or death.  
 10 Despite this knowledge, the supervisor defendants engaged in acts and omissions  
 11 based on deliberate indifference in one or more of the following respects:

- 12 a. Failing to use reasonable care in providing Michael Barton healthcare  
 13 while he was under their supervision as an inmate;
- 14 b. Failing to provide adequate facilities, including an infirmary that was not  
 15 “extremely inadequate” for the monitoring and care of Michael Barton as  
 16 an inmate;
- 17 c. Failing to create, enact, and enforce policies to use reasonable care in  
 18 providing healthcare to Michael Barton while he was under their  
 19 supervision as an inmate;
- 20 d. Failing to hire and train employees or contractors to use reasonable care  
 21 in providing healthcare to Michael Barton while he was under their  
 22 supervision as an inmate;
- 23 e. Failing to hire and train employees or contractors to recognize medical  
 24 emergencies;
- 25 f. Failing to obtain a medical examination by a trained physician to  
 26 evaluate Michael Barton’s serious illness;

- 1 g. Failing to establish policies so that seriously ill inmates would be  
2 admitted to the infirmary;
- 3 h. Failing to establish policies so that seriously ill inmates with mental  
4 health issues are provided with reasonable help to take their medications  
5 for their mental and physical health; and
- 6 i. Failing to establish policies so that Michael Barton would receive the  
7 vaccine.

8 **42.**

9 The supervisor defendants were aware that failure to hire, train and to establish  
10 reasonable policies as set forth above created a substantial risk of harm to Michael  
11 Barton and other inmates.

12 **43.**

13 As a result Michael Barton's estate is entitled to \$10,300,000 in compensatory  
14 damages.

15 **44.**

16 The supervisor defendants also acted with reckless and outrageous indifference  
17 to a highly unreasonable risk and acted with conscious indifference to Mr. Barton's  
18 health, safety and welfare. As a result, Michael Barton's estate is entitled to punitive  
19 damages of \$10,000,000.

20 **45.**

21 Plaintiff is entitled to recover his costs and attorney fees.

22 **FIFTH CLAIM FOR RELIEF**

23 **(Disability Discrimination- 42 U.S.C. §12131-12134 et seq. and 29 U.S.C. § 794**

24 **Section 504 of the Rehabilitation Act)**

25 **46.**

1 Plaintiff re-alleges paragraphs 1 through 18 as though fully set forth here.

2 **47.**

3 Plaintiff brings this claim to enforce Title II of the Americans with Disabilities  
4 Act of 1990, as amended (“Title II” and “ADA”), 42 U.S.C. §§ 12131-12134; Section  
5 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794; and their  
6 implementing regulations, 28 C.F.R Parts 35 and 42.

7 **48.**

8 The Oregon Department of Corrections, their agents, subcontractors, and  
9 independent contractors, are public entities as that term is defined under 42 U.S.C. §  
10 12131(1) and are subject to Section 504 of the Rehabilitation Act.

11 **49.**

12 Michael Barton was a disabled individual under the care of the Oregon  
13 Department of Corrections.

14 **50.**

15 Michael Barton sought and was denied reasonable medical care to Oregon  
16 Department of Corrections policies, practices and procedures.

17 **51.**

18 Defendant Oregon Department of Corrections did not provided proper medical  
19 care to Michael Barton.

20 **52.**

21 Defendant Oregon Department of Corrections violated 42 U.S.C. §§ 12132;  
22 Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794; and its  
23 implementing regulations by committing the following discriminatory acts or practices:

- 24 a. Failing to use reasonable care to provide Michael Barton healthcare while he  
25 was under its supervision as an inmate;  
26 b. Failing to provide reasonable modifications of the department’s policies,



- 1 practices or procedures in order to properly care for Mr. Barton;
- 2 c. Failing to monitor whether that prescribed medications were being
- 3 successfully administered or, in the alternative, failing to administer
- 4 prescribed medications by alternative methods such as by IV;
- 5 d. Failing to take reasonable preventative measures to address Michael Barton's
- 6 illnesses and death;
- 7 e. Failing either to heighten in-cell monitoring and care for Mr. Barton or to
- 8 refer him for treatment at another facility;
- 9 f. Failing to provide appropriate staff responses to Michael Barton's
- 10 conditions;
- 11 g. Failing to provide appropriate housing and care for Michael Barton;
- 12 h. Providing a prison infirmary extremely ill-constructed for monitoring and
- 13 treating inmates with influenza, pneumonia, and sepsis;
- 14 i. Failing to admit Michael Barton into the prison infirmary or to otherwise
- 15 elevate the amount of care he received, when his condition reasonably
- 16 required doing so;
- 17 j. Failing to create, enact, and enforce policies to use reasonable care in
- 18 providing healthcare to Michael Barton while he was under its supervision
- 19 as an inmate;
- 20 k. Failing to hire and train employees to use reasonable care in providing
- 21 healthcare to Michael Barton while he was under its supervision as an
- 22 inmate;
- 23 l. Failing to provide Mr. Barton with information about access to accessible
- 24 services or modifications to accessible services; and
- 25 m. Failing to provide Mr. Barton with the flu vaccine.
- 26

1 **53.**

2 Michael Barton suffered and died as a result of defendant's discriminatory  
3 conduct.

4 **54.**

5 Defendant's conduct was carried out with wanton, conscious, reckless, and  
6 outrageous disregard for Mr. Barton's civil rights, mental welfare, and physical welfare.

7 **55.**

8 Mr. Barton's estate is entitled to compensatory damages in the amount of  
9 \$10,300,000, \$10,000,000 in punitive damages as well as attorney fees and litigation  
10 costs pursuant to 42 U.S.C. § 12205 and 28 C.F.R. 35.175.

11 **SIXTH CLAIM FOR RELIEF**

12 **(Disability Discrimination- ORS 659A.142)**

13 **56.**

14 Plaintiff re-alleges paragraphs 1 through 23 as though fully set forth here.

15 **57.**

16 Mr. Barton had a mental impairment that substantially limited one or more of his  
17 major life activities.

18 **58.**

19 The Oregon Department of Corrections, their agents, subcontractors, and  
20 independent contractors, are public entities as that term is defined under ORS  
21 659.142A(1) and ORS 174.111.

22 **59.**

23 Michael Barton was a disabled individual under the care of the Oregon  
24 Department of Corrections.

25 **60.**

26 Michael Barton sought and was denied reasonable medical care to Oregon

1 Department of Corrections policies, practices and procedures.

2 **61.**

3 Defendant Oregon Department of Corrections did not provide proper medical  
4 care to Michael Barton.

5 **62.**

6 Defendant DOC violated ORS 659A.142, OAR 291-24-016 (1)(a), OAR 291-24-  
7 016 (1)(b), OAR 839-006-0291, and OAR 839-006-0270 in the following ways:

- 8 a. Failing to use reasonable care to provide Michael Barton healthcare while  
9 he was under its supervision as an inmate;
- 10 b. Failing to provide reasonable modifications of the department's policies,  
11 practices or procedures in order to properly care for Mr. Barton;
- 12 c. Failing to determine that prescribed medications were being successfully  
13 administered or, in the alternative, failing to administer prescribed  
14 medications by alternative methods such as by IV;
- 15 d. Failing to take reasonable preventative measures to address Michael  
16 Barton's illnesses and death;
- 17 e. Failing either to heighten in-cell monitoring and care for Mr. Barton or to  
18 refer him for treatment at another facility;
- 19 f. Failing to provide appropriate staff responses to Michael Barton's  
20 conditions;
- 21 g. Failing to provide appropriate housing and care for Michael Barton;
- 22 h. Providing a prison infirmary extremely ill-constructed for monitoring and  
23 treating inmates with influenza, pneumonia, and sepsis;
- 24 i. Failing to admit Michael Barton into the prison infirmary or to otherwise  
25 elevate the amount of care he received, when his condition reasonably  
26 required doing so;

- 1 j. Failing to create, enact, and enforce policies to use reasonable care in  
2 providing healthcare to Michael Barton while he was under its supervision  
3 as an inmate;  
4 k. Failing to hire and train employees to use reasonable care in providing  
5 healthcare to Michael Barton while he was under its supervision as an  
6 inmate;  
7 l. Failing to provide Mr. Barton with information about access to accessible  
8 services or modifications to accessible services.  
9 m. Failing to provide Mr. Barton with a flu vaccine.

10 **63.**

11 Michael Barton suffered and died as a result of defendant's discriminatory  
12 conduct.

13 **64.**

14 Defendant's conduct was carried out with wanton, conscious, reckless, and  
15 outrageous disregard for Mr. Barton's civil rights, mental welfare, and physical welfare.

16 **65.**

17 Mr. Barton's estate is entitled to compensatory damages in the amount of \$10,3  
18 00,000, punitive damages of \$10,000,00 as well as attorney fees, expert witness fees  
19 and litigation costs pursuant to ORS 20.107.

20 **SEVENTH CLAIM FOR RELIEF**

21 **(Spoliation)**

22 **66.**

23 Plaintiff re-alleges paragraphs 1 thru 23 as though fully set forth here.

24 **67.**

25 Defendant State of Oregon, through the DOC or other departments or agencies,  
26 had sole possession of Michael Barton's body, of video footage of Michael Barton, of

his cell and the area near his cell and/or the infirmary, and of other items highly relevant to the present lawsuit.

**68.**

Upon information and belief, these defendants initially failed to order an autopsy, disposed of Michael Burton's body, disposed of video footage and photos and discarded documents and evidence related to this lawsuit.

**69.**

Litigation was reasonably foreseeable when numerous deficiencies state these defendants initially destroyed, discarded or otherwise failed to preserve important evidence. Indeed, within four days of Michael Barton's death, a DOC internal review found several deficiencies related to his death. Plaintiff should be granted appropriate relief.

WHEREFORE, plaintiff prays for the following relief:

On the First Claim for Relief, judgment for:

- a. Compensatory damage of \$10,300,000;
- b. Punitive damages of \$10,000,000; and
- c. Costs and disbursements.

On the Second Claim for Relief, judgment for:

- a. Compensatory damage of \$10,300,000;
- b. Punitive damages of \$10,000,000; and
- c. Costs and disbursements.

On the Third Claim for Relief, judgment for:

- a. Compensatory damage of \$10,300,000;
- b. Punitive damages of \$10,000,000; and
- c. Reasonable costs and attorney fees.

On the Fourth Claim for Relief, judgment for:

- a. Compensatory damage of \$10,300,000;
- b. Punitive damages of \$10,000,000; and
- c. Reasonable costs and attorney fees.

On the Fifth Claim for Relief, judgment for:

- a. Compensatory damage of \$10,300,000;
- b. Punitive damages of \$10,000,000; and
- c. Reasonable costs and attorney fees.

On the Sixth Claim for Relief, judgment for:


- a. Compensatory damage of \$10,300,000;
- b. Punitive damages of \$10,000,000; and
- c. Reasonable costs and attorney fees.

On the Seventh Claim of Relief, judgment for :

- a. Appropriate sanctions for spoliation of evidence.

DATED this 20 day of March, 2020.

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